

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SAMANTHA WILLIAMS,
Plaintiff,
v.
UNITED PARCEL SERVICE, INC.,
Defendant.

No. 23-cv-02585-DC-SCR

ORDER GRANTING IN PART
DEFENDANT'S MOTION TO DISMISS

(Doc. No. 13)

This matter is before the court on Defendant United Parcel Service, Inc.'s ("UPS") motion to dismiss. (Doc. No. 13.) Pursuant to Local Rule 230(g), the pending motion was taken under submission to be decided on the papers. (Doc. No. 14.) For the reasons explained below, the court will grant in part Defendant's motion to dismiss.

BACKGROUND

Plaintiff Samantha Williams filed this employment action in the Sacramento County Superior Court against Defendant UPS, her former employer, and Does 1–20 on August 14, 2023. (Doc. No. 1-1 at 2.) On November 8, 2023, Defendant removed this action to this court. (Doc. No. 1.) Defendant filed a motion to dismiss on November 15, 2023. (Doc. No. 3.) In lieu of filing an opposition to that motion, Plaintiff filed the operative first amended complaint ("FAC") on December 6, 2023, as a matter of course pursuant to Federal Rule of Civil Procedure 15. (Doc. No. 9.) In her FAC, Plaintiff alleges the following.

1 Defendant hired Plaintiff as a “Package Handler” in October 2008, at its hub in West
2 Sacramento, California. (Doc. No. 9 at 6.) In January 2016, Plaintiff’s supervisor, Brian Avery,
3 singled Plaintiff out amongst her colleagues and criticized her for briefly using her phone while at
4 work. (*Id.*) In February 2016, Avery “sexually assaulted and sexually harassed” Plaintiff. (*Id.*)
5 Thereafter, Plaintiff reported the incident to human resources at UPS, but she was not contacted
6 by anyone from that office. (*Id.* at 6–7.) Plaintiff continued to work under Avery’s supervision
7 following the incident. (*Id.* at 7.) Also in February 2016, a male UPS employee positioned his
8 radio in front of his groin and made a sexual gesture in front of Plaintiff. (*Id.*) That same day,
9 Avery made a similar gesture using a large tube package towards Plaintiff. (*Id.*)

10 In April 2016, Plaintiff went to human resources to report safety issues regarding the
11 package conveyor belts. (*Id.* at 7.) Plaintiff also reported the perceived safety issues to the UPS
12 Ethics Hotline. (*Id.*) Shortly thereafter, a part-time supervisor at UPS informed Plaintiff and her
13 coworkers that there would be an audit because Plaintiff reported safety issues to human
14 resources. (*Id.*) Thereafter, Plaintiff was “moved to an area away from the sort aisle for unloading
15 packages.” (*Id.*)

16 In early 2017, Plaintiff signed up to become a “package car driver” and completed
17 trainings and tests associated with that position. (*Id.* at 8.) On June 8, 2017, Plaintiff began
18 working as a probationary package car driver. (*Id.* at 9.) On June 16, 2017, a driver supervisor
19 disqualified Plaintiff. (*Id.*) Plaintiff resumed driving utility vehicles after completing “retraining.”
20 (*Id.*)

21 In September 2018, Plaintiff was involved in an automobile accident while driving for
22 UPS’s West Sacramento Hub. (*Id.*) After retraining, Plaintiff continued to drive for UPS. (*Id.*) On
23 December 10, 2018, Plaintiff was involved in a second automobile accident while “performing
24 package car driving.” (*Id.*)

25 On March 4, 2019, Plaintiff witnessed an employee shut off a conveyer belt because
26 boxes were piling up and the situation became unsafe. (*Id.*) Plaintiff witnessed her supervisor,
27 Matty Ford, yell at the employee for turning off the conveyer belt. (*Id.*) On March 5, 2019,
28 Plaintiff and Ford “began yelling at each other” after the “boxes were up to [Plaintiff’s] knees.”

1 (*Id.*) Ford told another employee to clear the conveyer belt, and yelled at Plaintiff, “don’t get your
2 panties in a bunch.” (*Id.*) On March 7, 2019, Plaintiff reported a “safety hazard” to human
3 resources. (*Id.*) The next day, Plaintiff filed a complaint through the Occupational Safety and
4 Health Administration (“OSHA”) concerning “continuous safety issues and hostile intimidation.”
5 (*Id.*) A full-time supervisor confronted Plaintiff about her human resources complaint in front of
6 coworkers, and Plaintiff reported this incident to a union business agent. (*Id.*)

7 On March 11, 2019, Plaintiff began working in the “Irregular Packages” area even though
8 she requested a “switch with a lower seniority sort, which was denied.” (*Id.*) The following day,
9 Plaintiff met with the hub manager, a supervisor, and a shop steward regarding ongoing safety
10 issues. (*Id.*) On March 13, 2019, Plaintiff provided a note from a chiropractor that stated she
11 should not lift packages weighing more than 70 pounds. (*Id.*) Plaintiff’s supervisors denied “the
12 request to switch work areas based on the note.” (*Id.*) A shop steward told Plaintiff that
13 “assistance was only available in the irregular packaging area.” (*Id.*)

14 On March 14, 2019, union representative Dale Wentz informed Plaintiff that he could not
15 do anything about the supervisor’s decision. (*Id.* at 10.) On March 15, 2019, Plaintiff filed a
16 retaliation complaint with the Department of Industrial Relations and a grievance concerning
17 missed wages, but she received no response. (*Id.*) On March 18, 2019, Plaintiff’s chiropractor
18 removed her work restrictions “due to concerns about payment,” and Plaintiff returned to work as
19 normal. (*Id.*)

20 Several days later, packages “were getting backed up and falling on the floor,” and Ford
21 asked Plaintiff “why she was holding up the line.” (*Id.*) The following day, Plaintiff informed
22 another human resources representative that she believed she was being harassed and retaliated
23 against by Ford. (*Id.*) Plaintiff has repeatedly felt unsafe at her job and believes management does
24 not care about the wellbeing of employees. (*Id.*) Plaintiff’s male colleagues mocked her with a
25 high-pitched voice. (*Id.* at 11.) Plaintiff’s reports to human resources have gone unresolved. (*Id.*)

26 Plaintiff has been repeatedly passed up for promotions in favor of male colleagues with
27 significantly less seniority than her. (*Id.*) Three male colleagues were hired in 2013 and 2014 and
28 were promoted to full-time drivers before Plaintiff, even though she was hired in 2008. (*Id.*)

1 Plaintiff was subsequently injured and went on disability from November 2021 until
 2 November 2022. (*Id.*) Plaintiff alleges Defendant failed to engage in the interactive process when
 3 they offered Plaintiff jobs that were too far away from home (over 75 miles) and violated
 4 restrictions by requiring Plaintiff to perform repetitive tasks. (*Id.*) In November 2022, Defendant
 5 stopped communicating with Plaintiff, and Plaintiff believed she had been fired. (*Id.*) Plaintiff
 6 believed she was retaliated against for her participation in an “ongoing [Department of Fair
 7 Employment and Housing (“DFEH”)] discrimination investigation and participation in the Goins’
 8 class action.”¹ (*Id.*) Plaintiff alleges she has suffered deterioration of health, loss of job, and loss
 9 of salary, wages, bonuses, and benefits due to wrongful termination. (*Id.*)

10 On April 16, 2021, Plaintiff filed an administrative complaint against Teamsters Local
 11 150 with the California Civil Rights Department (“CRD”) (formerly, DFEH), and received a right
 12 -to-sue letter from the CRD on April 5, 2022. (Doc. No. 9 at 28–31.) On December 6, 2023—just
 13 a few weeks after Defendant filed its motion to dismiss, in which Defendant raised the issue of
 14 Plaintiff’s failure to exhaust administrative remedies under the Fair Employment and Housing
 15 Act (“FEHA”)—Plaintiff filed a second administrative complaint, this time against Defendant.
 16 (*Id.* at 36–37.) Plaintiff received a right to sue letter that same day. (*Id.* at 35.) As noted above,
 17 Plaintiff also filed the FAC on December 6, 2023. (Doc. No. 9.)

18 In her FAC, Plaintiff brings the following eleven causes of action against Defendant:
 19 disparate treatment in violation of public policy (claim 1); harassment based on gender, age, and
 20 sexual orientation in violation of FEHA, California Government Code §§ 12940(j)–(k) (claim 2);
 21 failure to prevent discrimination in violation of FEHA, California Government Code §§ 12900, *et*
 22 *seq.* (claim 3); intentional infliction of emotional distress (claim 4); breach of contract (claim 5);
 23 violation of the Equal Pay Act (claim 6); disability discrimination in violation of FEHA,

24
 25 ¹ On October 7, 2022, Plaintiff was named as a plaintiff and one of over a dozen proposed class
 26 representatives in a first amended complaint filed in a class action brought on behalf of female
 27 employees of UPS in the Northern District of California: *Goins et al. v. United Parcel Serv. Inc.*,
 28 No. 21-cv-08722-PJH. On April 20, 2023, the court in *Goins* granted in part UPS’s motion to
 dismiss and dismissed Plaintiff Williams and several other plaintiffs from that action based on
 their failure to exhaust administrative remedies. *See Goins v. United Parcel Serv. Inc.*, No. 21-cv-
 08722-PJH, 2023 WL 3047388, at *15 (N.D. Cal. Apr. 20, 2023).

California Government Code § 12926, *et seq.* (claim 7); failure to accommodate in violation of FEHA, California Government Code § 12940(m)(1) (claim 8); unfair competition in violation of California Business and Professions Code § 17200 (claim 9); wrongful termination in violation of public policy (claim 10); and retaliation in violation of FEHA, California Government Code § 12940, *et seq.* (claim 11). (*Id.* at 13–25.)

On January 24, 2024, Defendant filed the pending motion to dismiss all claims in this action with prejudice.² (Doc. No. 13.) Plaintiff filed an opposition to that motion on February 14, 2024.³ (Doc. Nos. 17, 18.) Defendant filed a reply thereto on February 16, 2024. (Doc. No. 19.)

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² Defendant also concurrently filed a request for judicial notice of three sets of documents. (Doc. No. 13-9.) First, Defendant requests the court take judicial notice of the second amended complaint filed in the *Goins* action, as well as the order issued in *Goins* on April 20, 2023. (*Id.*) Pursuant to Federal Rule of Evidence 201(b), a court may “judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). “Because court filings are ‘capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned,’ pleadings filed and orders issued in related litigation are proper subjects of judicial notice under Rule 201.” *McVey v. McVey*, 26 F. Supp. 3d 980, 984 (C.D. Cal. 2014) (citing *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n. 6 (9th Cir. 2006) (“We may take judicial notice of court filings and other matters of public record.”)). Given Plaintiff Williams was a named plaintiff in *Goins*, the court will take judicial notice of these documents. Second, Defendant requests the court take judicial notice of Plaintiff’s administrative complaints to CRD dated April 16, 2021 and December 6, 2023, as well as the right-to-sue letters dated April 5, 2022 and December 6, 2023. (Doc. No. 13-9 at 2.) However, because those documents are attached as exhibits to Plaintiff’s FAC in this action, judicial notice is not necessary and Defendant’s request as to these documents is denied. *See United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (explaining that in ruling on a motion to dismiss, courts may consider documents outside the pleadings if those documents are attached to the complaint, incorporated by reference in the complaint, or are matters of which judicial notice is taken). Third, Defendant requests the court take judicial notice of UPS’s National Master Agreement with the International Brotherhood of Teamsters Agreement for August 1, 2008, through July 31, 2023, and the Northern California Supplemental Agreement between Teamsters Local Unions and UPS for that same period. (Doc. No. 13-9 at 2.) Because it is unclear what specific contract Plaintiff bases her contract claim on, Defendant’s request for judicial notice as to these documents is denied.

³ Plaintiff also filed an evidentiary objection to the entire declaration of Shannon Baisden that Defendant concurrently filed in support of its motion to dismiss. (Doc. No. 13-6.) Plaintiff’s boilerplate objection, which offers no argument or analysis, is overruled.

LEGAL STANDARD

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) asks a court to dismiss a plaintiff's complaint for failure to state a claim upon which relief can be granted. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). A claim may be dismissed for lack of a cognizable legal theory or the absence of sufficient facts to support a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990) (citing *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 533–34 (9th Cir. 1984)).

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); see also Fed. R. Civ. P. 8(a)(2) (a complaint must contain a short and plain statement of the claim showing that the pleader is entitled to relief). A complaint satisfies the plausibility requirement if it contains sufficient facts for the court to “draw [a] reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). For purposes of a motion to dismiss, “[a]ll allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party.” *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996). If a court dismisses certain claims, “[l]eave to amend should be granted unless the district court ‘determines that the pleading could not possibly be cured by the allegation of other facts.’” *Knappenberger v. City of Phoenix*, 566 F.3d 936, 942 (9th Cir. 2009) (quoting *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc)).

ANALYSIS

A. Plaintiff's FEHA Claims (Claims Two, Three, Seven, Eight, and Eleven)

1. Administrative Exhaustion Under FEHA

A plaintiff is required to exhaust all administrative remedies before filing a civil action bringing claims under FEHA based on allegations of discrimination or retaliation. *Chew v. City & Cnty. of San Francisco*, 714 F. App'x 687, 690 (9th Cir. 2017).⁴ To satisfy the exhaustion

⁴ Citation to the unpublished Ninth Circuit opinions such as those cited here and elsewhere in this order is appropriate pursuant to Ninth Circuit Rule 36-3(b).

1 requirement, a plaintiff must file a timely and sufficient administrative complaint with the CRD.
2 Cal. Gov. Code §§ 12960, 12965; *see also Rodriguez v. Airborne Express*, 265 F.3d 890, 896 (9th
3 Cir. 2001).

4 FEHA claims are subject to two statutory deadlines: one for filing the CRD administrative
5 complaint and another for filing the civil lawsuit. *Acuna v. San Diego Gas & Elec. Co.*, 217 Cal.
6 App. 4th 1402, 1411 (2013). First, the complaint filed with the CRD “shall not be filed after the
7 expiration of three years from the date upon which the unlawful practice or refusal to cooperate
8 occurred.” Cal. Gov. Code § 12960(e)(5). Second, “the person claiming to be aggrieved may
9 bring a civil action . . . within one year from the date of [the CRD’s right-to-sue] notice.” Cal.
10 Gov. Code § 12965(c)(1)(C). In other words, to satisfy the timing requirements under FEHA, the
11 complainant must file a civil complaint initiating a lawsuit within one year of receiving a right-to-
12 sue notice from the CRD. *See Mitchell v. State Dep’t of Pub. Health*, 1 Cal. App. 5th 1000, 1004
13 (2016), *as modified on denial of reh’g* (Aug. 22, 2016). “It is the plaintiff’s burden to plead and
14 prove timely exhaustion of administrative remedies.” *Ayala v. Frito Lay, Inc.*, 263 F. Supp. 3d
15 891, 902 (E.D. Cal. 2017).

16 “Under FEHA, the scope of the [CRD] complaint defines the scope of the subsequent civil
17 action.” *Keever v. Mediation Ctr. of San Joaquin*, No. 2:13-cv-00029-KJM-KJN, 2015 WL
18 75194, at *6 (E.D. Cal. Jan. 6, 2015). “To exhaust his or her administrative remedies as to a
19 particular act made unlawful by the FEHA, the claimant must specify that act in the
20 administrative complaint, even if the administrative complaint does specify other cognizable
21 wrongful acts.” *Kaur v. Foster Poultry Farms LLC*, 83 Cal. App. 5th 320, 355 (2022) (citation
22 omitted). If a plaintiff alleges conduct in the civil lawsuit that is outside the scope of the charge
23 made in the written administrative complaint, that alleged conduct cannot serve as the basis for a
24 claim because the plaintiff failed to exhaust administrative remedies as to that conduct. *Chew*,
25 714 F. App’x at 690. A plaintiff may, however, rely on allegations of conduct that are “like or
26 reasonably related to the allegations” in the administrative charge to serve as a basis for a
27 claim. *Id.*

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2. Plaintiff's First Administrative Complaint

As noted above, Plaintiff filed her first administrative complaint on April 16, 2021, and received a right-to-sue letter on April 5, 2022. (Doc. No. 9 at 28–31.) In that first CRD complaint, Plaintiff brought a charge against the union (Teamsters Local 150), alleging that she experienced discrimination on or before September 30, 2019. Specifically, Plaintiff alleged:

From 2019 I believe the Union has not properly represented me due [to] my sex/gender (female). On March 13, 2019, I filed a written grievance, when I was forced on unpaid medical leave, with the Union office stating, I believed I could perform the essential job functions of my position, however Dale Wentz, union representative, told me nothing could be done unless I provided a medical note stating I had no medical restrictions/limitations. On September 19, 2019, I do not believe Mario Escobar, shop steward, properly represented me when I reported a sex/gender harassment incident involving a coworker as he did not report what I had reported to him.

(*Id.*) The right-to-sue letter Plaintiff received on April 5, 2022 authorized her to file a civil action “within one year from the date of this letter.” (*Id.* at 31.) Notably, Plaintiff did not name Defendant in the caption or body of her April 16, 2021 complaint.

California courts have not yet provided definitive guidance on whether a plaintiff may pursue FEHA claims against a party that was not specifically named in the underlying CRD complaint. “California appellate courts have interpreted [California Government Code § 12960] as establishing that exhaustion is not satisfied unless a plaintiff’s administrative charge provides defendant notice of the substance of plaintiff’s claims.” *Ayala*, 263 F. Supp. 3d at 903 (citing *Medix Ambulance Service, Inc.*, 97 Cal. App. 4th at 117–118 (2002); *Cole v. Antelope Valley Union High School Dist.*, 47 Cal. App. 4th 1505, 1511 (1996); *Martin v. Fisher*, 11 Cal. App. 4th 118, 119–123 (1992)). California appellate courts have also found that if a defendant is not named in either the caption or body of an administrative complaint, then that defendant has not received adequate notice pursuant to FEHA. *See generally Medix Ambulance*, 97 Cal. App. 4th at 116 (“None of these cases held that a harassment case may proceed against one not mentioned in the administrative complaint.”).

In its motion, Defendant argues broadly that Plaintiff’s failure to name Defendant in her first CRD complaint constitutes a failure to exhaust administrative remedies and precludes

1 Plaintiff from relying on the first CRD complaint to satisfy the exhaustion requirement for her
2 FEHA claims against Defendant in this case. (Doc. No. 13 at 12–13.) Plaintiff vaguely argues in
3 response that “all Plaintiff needed to do was to check the box on the [CRD] form to meet the
4 exhaustion requirement,” but does not address Defendant’s argument regarding Plaintiff’s failure
5 to name Defendant in the CRD complaint. (Doc. No. 18-1 at 10).

6 Here, there is no question that Defendant is not identified by name in the caption or body
7 of Plaintiff’s first CRD complaint. Plaintiff named only Teamsters Local 150, included only
8 Teamsters Local 150’s address and phone number in the caption, and mentioned by name only
9 other union members in the body of the complaint. (Doc. No. 9 at 27–30.) The CRD complaint
10 does not include Defendant as a respondent. Moreover, Defendant is not mentioned anywhere in
11 the body of the complaint, which does not even indicate that Plaintiff or the individuals named are
12 or were employed by Defendant. These facts distinguish this case from *Ayala*, in which the
13 district court found the plaintiff had exhausted her administrative remedies despite failing to name
14 the defendant company as a respondent in her CRD complaint. 263 F. Supp. 3d at 904. There, the
15 complaint described the individual respondents as employees of the defendant company, the
16 defendant company’s address was included as the address for the respondents, the body of the
17 complaint referenced the defendant company multiple times by name, and the right-to-sue letter
18 described the respondents as employees of the defendant company. *Id.* Thus, the court concludes
19 that the lack of reference to Defendant renders the first CRD complaint inadequate to put
20 Defendant on notice of Plaintiff’s charges against them and of the possibility that Defendant
21 would be named in a future lawsuit.

22 Therefore, Plaintiff cannot predicate her FEHA claims on the April 16, 2021 CRD
23 complaint.

24 3. Plaintiff’s Second Administrative Complaint

25 Plaintiff filed her second administrative complaint on December 6, 2023, this time against
26 Defendant, and received an immediate right-to-sue letter on the same day. (Doc. No. 9 at 35–37.)
27 Notably, Plaintiff filed her second CRD complaint five months *after* the commencement of this
28 lawsuit against Defendant on August 14, 2023, and only after Defendant filed a motion to dismiss

1 in part on administrative exhaustion grounds.

2 As previously discussed, a plaintiff asserting claims pursuant to FEHA must first exhaust
3 administrative remedies prior to filing a lawsuit in state or federal court. *Harris v. Cnty. of*
4 *Orange*, 682 F.3d 1126, 1135–36 (9th Cir. 2012) (citing *Rojo v. Kliger*, 52 Cal. 3d 65, 83 (1990)
5 (“We agree that exhaustion of the FEHA administrative remedy is a precondition to bringing a
6 civil suit *on a statutory cause of action*.”)). Unlike in the Title VII charge-filing requirement
7 context, which is a “non-jurisdictional claim processing rule,” *Fort Bend Cnty., Texas v. Davis*,
8 587 U.S. 541, 550 (2019), exhaustion of administrative remedies under FEHA is a “jurisdictional
9 prerequisite to the court.” *Johnson v. City of Loma Linda*, 24 Cal. 4th 61, 70 (2000) (citation
10 omitted).

11 Because Plaintiff failed to file her second administrative complaint prior to the filing of
12 this lawsuit, Plaintiff has not exhausted her administrative remedies as required under FEHA.
13 Therefore, Defendant’s motion to dismiss as to Plaintiff’s FEHA claims (claims 2, 3, 7, 8, and 11)
14 will be granted, without leave to amend. *See Ramirez-Castellanos v. Nugget Mkt., Inc.*, No. 2:17-
15 cv-01025-JAM-AC, 2020 WL 2770060, at *4 (E.D. Cal. May 28, 2020) (plaintiffs’ FEHA claims
16 failed as a matter of law where plaintiffs had not obtained their right-to-sue notice before filing a
17 lawsuit alleging FEHA claims); *Kobbervig v. M.A.C. Cosms., Inc.*, No. 17-cv-6543-DSF, 2018
18 WL 6177259, at *3 (C.D. Cal. Mar. 26, 2018) (dismissing FEHA claims for failure to exhaust
19 where plaintiffs filed their administrative complaints three months after they filed a civil suit
20 asserting FEHA claims and explaining that “[p]laintiffs are not granted leave to the amend
21 because to assert these claims, [they] must file a new lawsuit”); *Mitchell v. City of Santa Rosa*,
22 No. 08-cv-02698-SI, 2008 WL 4534050, at *5 (N.D. Cal. Oct. 7, 2008) (finding the court lacked
23 jurisdiction over plaintiff’s FEHA claim because plaintiff did not receive a right-to-sue letter until
24 after he filed a lawsuit).

25 **B. Disparate Treatment in Violation of Public Policy (Claim One)**

26 Plaintiff’s first claim is titled “Retaliatory Disparate Treatment in Violation of Public
27 Policy” in the caption of the FAC and “Disparate Treatment in Violation of Public Policy” in the
28 claim section. (Doc. No. 9 at 1, 13.) It is unclear from the FAC whether Plaintiff is asserting a

1 common law claim or a FEHA claim.

2 FEHA contains a provision that states it “does not repeal any of the provisions of . . . law
3 of [California] relating to discrimination” on various bases. Cal. Gov’t Code § 12993. Further, as
4 discussed by the California Supreme Court, the “common law of [California] provides any
5 number of remedial theories to compensate for injuries ‘relating to discrimination.’” *Rojo*, 52 Cal.
6 3d at 74. It is well-settled, for example, that California recognizes a common law action for
7 wrongful termination in violation of public policy, including for sex discrimination. *Badih v.*
8 *Myers*, 36 Cal. App. 4th 1289, 1296 (1995) (allowing Plaintiff to maintain claim for wrongful
9 discharge in violation of public policy because article 1, section 8 of the California Constitution
10 “expresses a fundamental public policy against sex discrimination in employment”).

11 Here, however, Plaintiff’s first claim does not appear to be a claim for wrongful
12 termination in violation of public policy because she already brings that claim as her tenth claim.
13 (See Doc. No. 9 at 23.) Further, the court is not aware of, nor does Plaintiff cite to, any cases that
14 establish a common law claim for disparate treatment in violation of public policy.

15 In addition, it is also unclear whether Plaintiff intends to bring her first claim under
16 FEHA. Notably, Plaintiff does not mention FEHA in her first claim, yet she references “FEHA”
17 explicitly in her seventh and eighth claims and cites FEHA’s code provisions in her second, third,
18 and eleventh claims. (Doc. No. 9.) Defendant argues in its motion to dismiss that Plaintiff’s first
19 claim is not actually a common law cause of action and may be “some permutation of a FEHA
20 claim.” (Doc. No. 13 at 12 n.1.) Plaintiff does not respond to this argument nor clarify in her
21 opposition the basis for her first claim.

22 Thus, the court will grant Defendant’s motion to dismiss Plaintiff’s first claim with leave
23 to amend. Although Plaintiff had an opportunity to clarify the legal basis for her first claim in her
24 opposition and chose not to do so, it does not appear leave to amend would be futile. The court
25 notes, however, to the extent Plaintiff’s first claim is, as Defendant suggests, alleging a violation
26 of FEHA, that claim would be subject to dismissal without leave to amend for the reasons
27 discussed above with regard to Plaintiff’s FEHA claims.

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C. Intentional Infliction of Emotional Distress Claim (Claim 4)

To state a claim for intentional infliction of emotional distress (“IIED”) under California law, a plaintiff must show “(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff’s suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant’s outrageous conduct.” *Avina v. United States*, 681 F.3d 1127, 1131 (9th Cir. 2012) (quoting *Hughes v. Pair*, 46 Cal. 4th 1035, 1050 (2009)). The defendant must also intend to inflict injury with the understanding that injury will result. *Hughes*, 46 Cal. 4th at 1051.

Defendant argues Plaintiff’s IIED claim should be dismissed because the FAC includes the “garden-variety” employment discrimination and harassment allegations that are insufficient to state a claim of IIED. (Doc. No. 13 at 17.) Defendant also argues that Plaintiff’s IIED claim is preempted by the Worker’s Compensation Act (“WCA”). (*Id.*) In her opposition to Defendant’s motion, Plaintiff counters that “forcing Plaintiff to endure sexual harassment and discrimination,” among other things, are sufficient to state an IIED claim and that her claim is not barred by the WCA. (Doc. No. 18-1 at 17–18.)

Relevant to this claim, Plaintiff alleges Defendant’s “conduct in allowing the abuse of Plaintiff as described [in the FAC] was extreme and outrageous and went beyond all bounds of decency.” (Doc. No. 9 at 17.) Plaintiff also alleges Defendant “fostered a hostile environment that was resistant to equal opportunities among its employees” in violation of the “California Labor Code.” (*Id.*) Further, Plaintiff’s IIED claim incorporates the facts previously alleged in the FAC, which necessarily includes her allegations that in February 2016, her supervisor “sexually assaulted and sexually harassed” and made a sexual gesture to her using a large tube package by his groin. (*Id.* at 7–8.)

However, it is unclear as to what “abuse” Plaintiff refers to in her IIED claim. The FAC does not specify conduct by Defendant that was intended to cause Plaintiff severe emotional distress. *See Reynolds v. Shure*, 148 F. Supp. 3d 928, 932 (E.D. Cal. 2015) (noting plaintiff incorporated facts previously alleged in the complaint but did not further explain how defendant’s

actions were outrageous and or how his distress was severe); *Newman v. San Joaquin Delta Cmty. Coll. Dist.*, No. 20-cv-93441-WBS-KJN, 2010 WL 2179964, at *5 (E.D. Cal. May 27, 2010). As currently pled in the FAC, Plaintiff's IIED claim lacks sufficient factual allegations to show that Defendant's conduct was outrageous and intentional, or that Defendant acted with reckless disregard of the possibility of causing emotional distress. *See Dove v. PNS Stores, Inc.*, 982 F. Supp. 1420, 1425 (C.D. Cal. 1997). Indeed, Plaintiff does not clearly allege what specific action taken by Defendant caused her alleged emotional distress.

Even if Plaintiff's IIED claim is based on her allegation in the FAC that in February 2016, her supervisor "sexually assaulted" her, Plaintiff does not allege any facts to provide context as to what conduct occurred nor specific allegations regarding what she reported to Defendant's human resources department. Rather, Plaintiff vaguely refers to the sexual assault as "the incident"—without describing the incident—and alleges she reported the incident to human resources but was not contacted thereafter and continued to work under Avery's supervision following the incident. (*Id.* at 6–7.) The court recognizes, however, that Plaintiff may be able to allege additional facts to support her IIED claim because IIED claims have been found to be plausibly alleged where an employee's reports of sexual harassment to their employer went unaddressed. *See Rankins v. United Parcel Serv., Inc.*, No. 23-cv-05785-JSC, 2024 WL 3416508, at *3 (N.D. Cal. July 15, 2024) (permitting an IIED claim against employer based on sexual harassment by a coworker that went unaddressed despite plaintiff's complaints to employer); *Deering v. Lassen Cmty. Coll. Dist.*, No. 2:07-cv-01521 JAM-DAD, 2008 WL 4570339, at *8 (E.D. Cal. Oct. 14, 2008) ("[I]f properly pled, [s]exual harassment will constitute the outrageous behavior element of a cause of action of intentional infliction of emotional distress."); *see also Matthews v. Pinchback*, No. 2:22-cv-1329-DJC-CSK, 2024 WL 5182165, at *4 (E.D. Cal. Dec. 20, 2024) (plaintiff's claim for IIED premised on sexual assault and battery allegations survived a motion to dismiss where plaintiff alleged his penis was penetrated without his consent to collect DNA but that the procedure served no legitimate investigatory purpose and was conducted "solely to humiliate, degrade, and intimidate [plaintiff]").

Additionally, Plaintiff fails to plead any facts to show she suffered serious emotional

1 distress sufficient to state a claim for IIED. Instead, Plaintiff alleges in conclusory fashion that
 2 she experienced “deterioration of health.” (Doc. No. 9 at 18.) But Plaintiff offers no facts to
 3 substantiate her general allegation that she suffered from a “deterioration of health” or that this
 4 alleged harm amounted to serious emotional distress. *See McKenna v. Permanente Med. Grp.,*
 5 *Inc.*, 894 F. Supp. 2d 1258, 1275 (E.D. Cal. 2012) (dismissing plaintiff’s IIED claim where
 6 plaintiff failed to plead facts showing she suffered from conditions including embarrassment,
 7 humiliation, anxiety, and anguish). For these reasons, the court finds Plaintiff’s allegations are
 8 insufficient to state a cognizable IIED claim.

9 Next, the court turns to Defendant’s argument that Plaintiff’s IIED claim should be
 10 dismissed without leave to amend because that claim is also preempted by the WCA’s exclusivity
 11 doctrine. The WCA is the exclusive remedy for claims of IIED when the claims arise out of
 12 action taken within the context of the employment relationship. *Carlos v. Old Dominion Freight*
 13 *Line, Inc.*, 726 F. App’x 576, 579 (9th Cir. 2018); *Cole v. Fair Oaks Fire Prot. Dist.*, 43 Cal. 3d
 14 148, 233 (1987); Cal. Lab. Code §§ 3600, *et seq.* WCA preemption applies even where an
 15 employer’s acts within the employment relationship are “calculated to cause severe emotional
 16 disturbance.” *Gantt v. Sentry Ins.*, 1 Cal. 4th 1083, 1099 (1992), *overruled on other grounds by*
 17 *Green v. Ralee Eng’g Co.*, 19 Cal. 4th 66 (1998). However, there exists a “longstanding view that
 18 unlawful discrimination and retaliation in violation of FEHA falls outside the compensation
 19 bargain” and that “claims of such intentional infliction of emotional distress based on such
 20 discrimination and relation” are not covered by WCA exclusivity. *Light v. Dep’t of Parks &*
 21 *Recreation*, 14 Cal. App. 5th 75, 101 (2017).

22 Here, Plaintiff’s generalized allegations do not provide sufficient detail for the court to
 23 determine at this point whether her IIED claim would be subject to the WCA exclusivity doctrine.
 24 Therefore, the court will grant Defendant’s motion to dismiss Plaintiff’s IIED claim with leave to
 25 amend.

26 **D. Breach of Contract Claim (Claim 5)**

27 The elements of a breach of contract claim under California law are: (1) existence of a
 28 valid contract; (2) performance by the plaintiff or excuse for nonperformance; (3) breach by the

1 defendant; and (4) damages. *Ahmadi v. United Cont'l Holdings, Inc.*, No. 1:14-cv-00264-LJO,
2 2014 WL 1281056, at *3 (E.D. Cal. Mar. 31, 2014) (citing *First Com. Mortg. Co. v. Reece*, 89
3 Cal. App. 4th 731, 745 (2001)).

4 Plaintiff alleges she “entered into an employment contract with Defendant,” and
5 “Defendant agreed to pay [P]laintiff’s hourly wages” (Doc. No. 9 at 18.) Plaintiff alleges the
6 existence of the employment contract is substantiated by “several paystubs” that Defendant
7 provided to Plaintiff. (*Id.*) Plaintiff alleges that she “fulfilled her duties and conditions under the
8 contract” and “has been harmed” because of her wrongful termination. (*Id.*) In her FAC, Plaintiff
9 does not identify which specific contract she alleges Defendant breached.

10 Defendant argues in its motion to dismiss that Plaintiff’s breach of contract claim is
11 preempted by federal law, specifically section 301 of the Labor Management Relations Act
12 (“LMRA”). (Doc. No. 13 at 18.) Defendant argues Plaintiff was an at-will employee and that her
13 employment relationship with Defendant was governed by the UPS’s National Master Agreement
14 with the International Brotherhood of Teamsters and its Northern California Supplemental
15 Agreement with Teamster Local Union No. 150 (collectively, “collective bargaining
16 agreements”). (*Id.*) In her opposition, Plaintiff counters that her breach of contract claim was “not
17 created by, or dependent on, the collective bargaining agreement which does not provide an outlet
18 for gender discrimination, physical assault and fat jokes.” (Doc. No. 18-1 at 20.) Plaintiff further
19 argues her breach of contract claim is not preempted because Plaintiff “did not account for these
20 types of harms when she entered the bargain.” (*Id.*)

21 Plaintiff appears to suggest that her breach of contract claim is not based on the collective
22 bargaining agreements because the types of harms identified by Plaintiff were not contemplated
23 by the agreement. (*Id.*) To that end, Plaintiff fails to allege sufficient facts to state the first
24 element of a breach of contract claim—the existence of a contract. Plaintiff does not attach to her
25 original complaint or FAC an employment contract or identify in her opposition the specific
26 employment contract she refers to, let alone provisions of that contract Defendant apparently
27 violated. Plaintiff provides no citation in her opposition to support that pay stubs can alone
28 establish the existence of an implied employment contract nor is the court aware of any case that

1 supports this proposition. A rule allowing pay stubs alone to support the establishment of an
2 employment contract “would effectively serve to eliminate or severely undermine the existence of
3 at-will employment in California.” *Nanthavong v. United Parcel Serv., Inc.*, No. 2:23-cv-02670-
4 DJC-DB, 2024 WL 626707, at *3 (E.D. Cal. Feb. 14, 2024).

5 Simply put, Plaintiff cannot allege the existence of a contract based solely on pay stubs.
6 Because it is possible that Plaintiff may have a separate basis for alleging the existence of an
7 employment contract with Defendant, the court will grant Defendant’s motion to dismiss
8 Plaintiff’s breach of contract claim with leave to amend.

9 **E. Equal Pay Act Violation Claim (Claim 6)**

10 The Equal Pay Act prohibits sex-based wage discrimination by providing that no
11 employer shall discriminate by paying different wages to employees of opposite sexes within an
12 establishment for jobs that require substantially equal skill, effort, and responsibility, and which
13 are performed under similar working conditions. 29 U.S.C. § 206(d)(1); *E.E.O.C. v. Maricopa*
14 *Cnty. Cmty. Coll. Dist.*, 736 F.2d 510, 513 (9th Cir. 1984).

15 Defendant argues that Plaintiff’s Equal Pay Act claim should be dismissed because
16 Plaintiff does not allege facts sufficient to state a cognizable claim. (Doc. No. 13 at 21.)
17 According to Defendant, Plaintiff fails to allege: (1) that violations occurred within the “same
18 establishment” as opposite-sex comparators; (2) any facts about the work she performed for
19 which she was underpaid; and (3) how her work was substantially similar to work performed by
20 men under similar working conditions. (*Id.*) The court agrees and finds that Plaintiff’s allegations
21 as to this claim are cast as legal conclusions and are deficient of factual support. Plaintiff vaguely
22 alleges in her complaint that she is “similarly situated with respect to her claims that UPS paid
23 and promoted her less than her male counterparts, because she was forced to termination instead
24 of male counterparts who also had disabilities.” (Doc. No. 9 at 19.) Plaintiff’s allegation that
25 unidentified male employees were “similarly situated” is merely a legal conclusion and is
26 otherwise unsupported by allegations of facts elsewhere in the complaint. Plaintiff’s complaint
27 does not allege any facts to demonstrate she performed her role under similar working conditions
28 and that her role required similar skill, effort, and responsibility as that of her male counterparts.

1 *See Werner v. Advance Newhouse P'ship, LLC*, No. 1:13-cv-01259-LJO, 2013 WL 4487475, at
 2 *5 (E.D. Cal. Aug. 19, 2013) (dismissing Equal Pay Act claim because the plaintiff's allegation
 3 she was paid less than similarly situated male employees was conclusory and not entitled to the
 4 assumption of truth absent factual support); *Davis v. Inmar, Inc.*, No. 21-cv-03779-SBA, 2022
 5 WL 3722122, at *5 (N.D. Cal. Aug. 29, 2022) (dismissing Equal Pay Act claim where plaintiff
 6 alleged only that an unidentified male colleague performed substantially similar work and was
 7 paid more).

8 Therefore, the court will grant Defendant's motion to dismiss Plaintiff's Equal Pay Act
 9 claim. Because it is possible that Plaintiff may be able to allege additional facts to support this
 10 claim, the court will grant Plaintiff leave to amend this claim.

11 **F. Unfair Competition Law Claim (Claim 9)**

12 To state a UCL claim, "a plaintiff must show either an (1) 'unlawful, unfair, or fraudulent
 13 business act or practice,' or (2) 'unfair, deceptive, untrue or misleading advertising.'" *Lippitt v.*
 14 *Raymond James Fin. Servs., Inc.*, 340 F.3d 1033, 1043 (9th Cir. 2003), *as amended* (Sept. 22,
 15 2003) (quoting Cal. Bus. & Prof. Code § 17200). Plaintiff's UCL claim is predicated on the
 16 "unlawful" prong, because Plaintiff alleges that Defendant violated the UCL "by virtue of illegal
 17 conduct" and "engaging in business practices that are unlawful under other state or federal laws."
 18 (Doc. No. 9 at 22.)

19 To state a claim under the unlawful prong of the UCL, the alleged conduct must violate a
 20 "borrowed" law. *Davis v. HSBC Bank Nev., N.A.*, 691 F.3d 1152, 1168 (9th Cir. 2012). No
 21 independent right to sue exists under the "unlawful" prong of the UCL. *Mejia v. Chipotle*
 22 *Mexican Grill, Inc.*, 793 F. App'x 519, 521 (9th Cir. 2019).

23 Here, Plaintiff points to the discrimination and harassment provisions under FEHA as the
 24 predicate for her claim under the unlawful prong. (Doc. No. 9 at 22.) Because Plaintiff's FEHA
 25 claims fail due to Plaintiff's failure to exhaust administrative remedies, any UCL claim predicated
 26 upon them also fail. *See Valladares v. Specialized Loan Servicing, LLC*, No. 1:23-cv-01224-
 27 NOD-JSAB, 2023 WL 8435575, at *4 (E.D. Cal. Dec. 5, 2023) (dismissing plaintiff's UCL claim
 28 where plaintiff failed to properly state a claim for a violation of any underlying law); *Krantz v. BT*

1 *Visual Images, L.L.C.*, 89 Cal. App. 4th 164, 178 (2001) (“[Claims] for relief under the unfair
2 competition law []—stand or fall depending on the fate of the antecedent substantive causes of
3 action.”).

4 Therefore, the court will dismiss Plaintiff’s UCL claim. To the extent Plaintiff’s UCL
5 claim is predicated on violations of FEHA, that claim will be dismissed without leave to amend
6 because the court is not granting leave to amend on Plaintiff’s FEHA claims. But to the extent
7 Plaintiff’s UCL claim is predicated on violations of Equal Pay Act, Plaintiff’s UCL claim will be
8 dismissed with leave to amend.

9 **G. Wrongful Termination Claim (Claim 10)**

10 To state a common law claim for wrongful termination in violation of public policy,
11 Plaintiff must allege: (1) she was employed by UPS; (2) UPS discharged her; (3) “violation of
12 public policy substantially motivated the discharge,” and (4) the discharge caused her harm. *See*
13 *Diego v. Pilgrim United Church of Christ*, 231 Cal. App. 4th 913, 920 (2014). The policy must be
14 “(1) delineated in either constitutional or statutory provisions; (2) public in the sense that it inures
15 to the benefit of the public rather than serving merely the interests of the individual; (3) well
16 established at the time of the discharge; and (4) substantial and fundamental.” *Id.* (citations and
17 quotation marks omitted).

18 Defendant moves to dismiss Plaintiff’s wrongful termination claim on the grounds that it
19 is a derivative claim and all of Plaintiff’s other claims fail. (Doc. No. 13 at 23.) Plaintiff offers no
20 argument in her opposition to rebut this assertion. Nor does Plaintiff provide any clarity or proffer
21 any additional allegations that she would include in a further amended pleading to clarify the
22 policy she refers to in her wrongful termination claim.

23 It is unclear to the court on what “constitutional or statutory provisions” Plaintiff bases her
24 wrongful termination claim. To the extent that Plaintiff’s claim is derivative of the FEHA claims,
25 the wrongful termination claim is subject to dismissal for the same reasons that Plaintiff’s FEHA
26 claims are being dismissed without leave to amend. However, because it is not clear whether
27 Plaintiff is basing this claim on other “constitutional or statutory provisions,” the court will grant
28 Defendant’s motion to dismiss Plaintiff’s claim for wrongful termination with leave to amend.

1 *See Nanthavong*, 2024 WL 626707, at *6 (plaintiff's derivative wrongful termination claim
2 survived where the court only partially granted defendant's motion to dismiss).

3 **CONCLUSION**

4 For the reasons explained above:

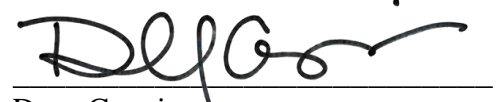
- 5 1. Defendant's request for judicial notice (Doc. No. 13-9) is GRANTED in part and
6 DENIED in part as specified herein;
- 7 2. Defendant's motion to dismiss (Doc. No. 13) is GRANTED in part, as follows:
 - 8 a. Plaintiff's first claim for disparate treatment in violation of public policy is
9 dismissed with leave to amend;
 - 10 b. Plaintiff's second claim for harassment based on gender, age, and sexual
11 orientation is dismissed without leave to amend;
 - 12 c. Plaintiff's third claim for failure to prevent discrimination is dismissed
13 without leave to amend;
 - 14 d. Plaintiff's fourth claim for intentional infliction of emotional distress is
15 dismissed with leave to amend;
 - 16 e. Plaintiff's fifth claim for breach of contract is dismissed with leave to
17 amend;
 - 18 f. Plaintiff's sixth claim for violation of the Equal Pay Act is dismissed with
19 leave to amend;
 - 20 g. Plaintiff's seventh claim for disability discrimination is dismissed without
21 leave to amend;
 - 22 h. Plaintiff's eighth claim for failure to accommodate is dismissed without
23 leave to amend;
 - 24 i. Plaintiff's ninth claim for unfair business practice under the UCL is
25 dismissed with leave to amend, in part, as specified herein;
 - 26 j. Plaintiff's tenth claim for wrongful termination in violation of public
27 policy is dismissed with leave to amend; and
 - 28 k. Plaintiff's eleventh claim for retaliation is dismissed without leave to

1 amend;

- 2 3. Within twenty-one (21) days of the date of entry of this order, Plaintiff shall file a
3 second amended complaint to amend the claims for which leave to amend has been
4 granted, or alternatively, file a notice of her intent not to file a second amended
5 complaint; and
6 4. Plaintiff is warned that her failure to comply with this order may result in
7 dismissal of this action due to Plaintiff's failure to prosecute.

8
9 IT IS SO ORDERED.

10 Dated: May 14, 2025

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13 Dena Coggins
14 United States District Judge
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